ANNUAL REPORT
2002/2003

OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

PROVINCE OF PRINCE EDWARD ISLAND

December 11th, 2003

The Honourable Greg Deighan
Speaker of the Legislative Assembly
Province House
Richmond Street
Charlottetown, P.E.I.
C1A 7K7

Dear Mr. Speaker:

I am pleased to enclose the first Annual Report of the Office of the Information and Privacy Commissioner, covering the period from November 18th, 2002 to November 30th, 2003.

This report was prepared in accordance with Section 59(1) of the *Freedom of Information and Protection of Privacy Act,* S.P.E.I. 2002, Chapter F-15.01.

Respectfully submitted,

Karen A. Rose
Information and Privacy Commissioner
/emc

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Message from the Information and Privacy Commissioner

It has been one year since I was appointed Information and Privacy Commissioner for the Province of Prince Edward Island. Following a very short period for the establishment of office procedures and policies, we were given the opportunity to put those policies and procedures to the test. The Office has remained consistently occupied with freedom of information requests and privacy issues.

The Office of the Information and Privacy Commissioner has been designated as a part-time office, with both the Commissioner and one staff person working half days, five days per week. Most of our time has been taken up with the day-to-day administration of freedom of information reviews. During the year, as a result of those reviews, guidelines have been established by the Office for the interpretation of various sections of the *Freedom of Information and Protection of Privacy Act*. It is our goal that these guidelines will enable the Public Bodies subject to the *Act*, and the people of Prince Edward Island, to have a high degree of confidence in the processing of freedom of information reviews.

I should note that I have been impressed with the quality of the submissions from both applicants and public bodies during the freedom of information review process. I believe it reflects a readiness for the *Act* and the principles the *Act* stands for.

Due to the newness of the Office, as well as the limited time resources within it, our work on privacy has really barely begun. With the enactment of our own provincial legislation, and the coming into force of the federal *Personal Information Protection and*

Electronic Documents Act to the private sector on January 1, 2004, it is our observation that privacy issues are becoming more prominent in our community. As well, we believe individuals on Prince Edward Island are becoming more aware of their privacy rights.

In dealing with the few privacy complaints which we have received this year, it has become obvious that an individual's perceived loss of privacy cannot be given back to them. The most which can be done by a public body or by this Office is to establish policies and procedures to help prevent future privacy breaches from occurring.

Instead of waiting for privacy complaints to come into this Office, it is our preference and intention to deal with privacy in a positive and proactive way. Rather than react to privacy complaints once a breach has occurred, our goal will be to work with public bodies to try to ensure, inasmuch as it is possible, that individuals' personal privacy is not breached in the first place. Open communication with and being available to the public bodies will help foster this goal.

Part of the challenge of the past year has been defining the Information and Privacy Commissioner's role to the public. The Commissioner provides *independent* oversight of the decisions of public bodies as those decisions relate to the *Act*. The independence of this Office is vital to a proper fulfilment of the duties of Office. As an Officer of the Legislative Assembly, the Commissioner has sworn to conduct her office with an impartial approach. The Commissioner does not "take sides" between a given applicant/complainant and a public body. Rather, the Commissioner's role is to conduct an investigation to determine the facts, request submissions and make findings in an impartial manner.

The content of this Annual Report will include the activities of this Office over the past year. As well, readers may be interested in Appendix A, a comparison of the total number of access to information requests received by the public bodies and the total number of requests for review to this Office which emanated from some of those requests.

As noted above, there is much work to do for this Office to properly fulfill its mandate as set out in the *Freedom of Information and Protection of Privacy Act*. This year has been a satisfactory beginning.

Karen A. Rose
Information and Privacy Commissioner

Overview of the *Freedom of Information and Protection of Privacy Act*

Freedom of Information

Prince Edward Island enacted the *Freedom of Information and Protection of Privacy Act* on November 1, 2002. At this time, all provincial and territorial jurisdictions in Canada have this type of legislation.

Pursuant to the *Act*, all public bodies are obliged to adopt a policy of accountability, openness and transparency and to provide a right of access to information, with some limited exceptions.

Individuals are entitled to request any recorded information held by a public body. This information may be contained in books, documents, maps, drawings, photographs, letters, vouchers, papers and any other information that is written, photographed, recorded or stored in any manner but does not include software or any mechanism that produces records.

Individuals also have the right to request access to their own personal information held by public bodies. Personal information includes an individual's name, home or business address, home or business telephone number, age, gender, education, marital status, health care history, financial history, race, criminal history, religious or political beliefs or associations, fingerprints, blood types, inheritable characteristics and other identifiable information about the individual.

Each public body has a Freedom of Information and Protection of Privacy (FOIPP) co-ordinator who will explain and help individuals with requests for access to information. There is a $5 application fee for access to general records and no charge for applications for an individual's own personal information. There may also be charges for photocopying and sending the records. Generally, a public body must respond to an individual's request within 30 days although there are certain circumstances which may extend this time.

If an individual is not satisfied with the decision of the public body relating to the request for access, the individual may request a review by the Commissioner within 60 days of receiving the decision of the public body. The request for review must be in writing to the Office of the Information and Privacy Commissioner. There is no fee associated with the request.

The Commissioner's role is to provide independent oversight of the public body's decision. This will involve investigating the facts, reviewing the records at issue, obtaining submissions from all parties involved in the review and, in some cases, making an Order. Some requests for review are resolved between the parties before an Order is necessary. Such a resolution may occur through mediation or simply clarification of the facts or issues between the parties.

Privacy

Under the *Freedom of Information and Protection of Privacy Act* public bodies are obliged to ensure the protection of an individual's personal privacy. Privacy rights under the *Act* control collection, use and disclosure of an individual's personal information by public bodies.

Individuals should be able to choose who has access to their personal information, and to control the use and disclosure of that information. These ideas are the underlying principles of our protection of privacy legislation. Personal privacy is a part of our way of life, and the *Act* contributes to preserving that way of life.

For example, a public body may only collect an individual's personal information if it has legal authority to collect it, for law enforcement purposes, or if it is necessary for one of the public body's operating programs or activities.

Public bodies must also make reasonable efforts to ensure that an individual's personal information in its custody or control is accurate and complete. It also must ensure the security of an individual's personal information against such risks as unauthorized access, collection, use, disclosure, disposal or destruction.

An individual who believes that their privacy rights are not being protected by a public body may make a written complaint to the Commissioner's office. The

Commissioner is authorized to attempt to resolve such complaints. If the complaint cannot be resolved, the Commissioner will either dismiss the complaint or issue an Order requiring the public body to stop collecting, using or disclosing personal information in violation of the *Act* or requesting the public body to destroy personal information collected in violation of the *Act*.

Activities of the Office

New Public Bodies

On November 8, 2003, regional health authorities and school boards came under the jurisdiction of the *Act*. This is a positive step for freedom of information and protection of privacy. We look forward to our work with these new public bodies.

Staff

The administrative assistant of the Office, Ellen Connolly, has taken on other tasks over the course of our first year. As part of the professional development of the Office, Ms. Connolly participated in an introduction to mediation course earlier this year. A central part of the review process is to attempt to resolve disputes between applicants/complainants and public bodies. The Ms. Connolly's role has expanded over the year to include summarizing and attempting to resolve some complaints or applications for review in the initial stage of the application process, before a formal review is actually necessary.

During the year, Ms. Connolly was also responsible for developing the information for the website of the Office of the Information and Privacy Commissioner. This website may be found at www.assembly.pe.ca/foipp/index.php.

In February, Giselle Basanta visited our Office to provide valuable assistance

with office procedures and prepare for mediation. Ms. Basanta, who was on a work exchange with the Nova Scotia Freedom of Information Review Office, has many years experience as an investigator and mediator with the Ontario Office of the Information and Privacy Commissioner.

French Language Services

It is the intention of the Office to be able to provide some French language services to the public. Commissioner Rose has reviewed her French language skills by taking a French conversation class. In addition, Ms. Connolly also participated in an introduction to French class and plans to enroll again in the coming year.

Activities of the Commissioner

Freedom of Information

As noted earlier, the majority of the Commissioner's work has involved conducting freedom of information reviews. There have been 36 freedom of information review files opened during the past year and 15 of those review files have resulted in Orders being issued. Six orders have been issued thus far (one order includes 10 review files).

Of the remaining 21 review files, 11 have been resolved and the files have been closed. One review file was closed as the request did not fall under the Commissioner's jurisdiction and 9 files are currently under review with the Orders yet to be issued.

Public Education

A central part of the Commissioner's role is educating the public with regard to freedom of information and protection of privacy issues. The Commissioner has had 11 speaking engagements over the past year to various groups interested in knowing more about fair information practices and/or access to information. The Commissioner has also participated in several media interviews, which has contributed to public awareness.

As noted earlier, the Commissioner has maintained an open communication policy with the public bodies, where possible. As part of that practice, the Commissioner has

provided general advice to members of the public bodies throughout the year, especially relating to privacy protection and fair information practices.

The goal of public education has been accomplished largely on a one-on-one basis, through answers to queries from the general public. Individuals are invited to contact the Office of the Information and Privacy Commissioner during office hours to obtain answers with regard to the review process or the role of the Information and Privacy Commissioner in that process.

Summary of Selected Orders

(1) Order No. 03-001 Re: Department of Development & Technology, Department of Fisheries Aquaculture & Environment, Department of Transportation and Public Works, Prince Edward Island Liquor Control Commission, Island Waste Management Corporation, Workers Compensation Board, dated May 21, 2003.

This Order concerned the calculation of fees by a public body and the right of an individual to apply for a fee waiver in certain circumstances.

The Applicant had made ten access requests under the Act to various public bodies for various records. The Applicant paid the initial $5 fee in each case. The Applicant was then provided with a fee estimate in each case. In each of the ten cases, the Applicant requested fee waivers from the public body and, in each case, the Applicant's request for a fee waiver was denied. The Applicant also disputed the calculation of seven of the ten estimates provided by the public body.

Calculation of Fee Estimates

The Order confirmed that there is no discretion for a public body to charge any fee after the initial $5 fee until the amount of time spent, as estimated by the public body, exceeds two hours. The public body's policy was to provide the applicant with the first two hours of time spent free of charge.

The regulation to the *Act* allows the public body to charge a maximum of $10 per half hour for (1) locating and retrieving a record, and (2) preparing a record for disclosure. The Order provides guidelines as to which activities constitute location and retrieval time and which constitute preparing a record for disclosure. The Order also provides reasonable time guidelines for both.

On the merits of the seven fee estimates challenged, six were reduced and one remained the same.

Fee Waivers

The applicant argued that the records at issue relate to the matter of public interest pursuant to section 76(4) of the *Act*. The Order provides guidelines to the public bodies regarding how to exercise discretion properly under this section and as to what constitutes "public interest" under this section. The Order provides a list of questions which the public body should consider before reaching a conclusion with regard to whether a record relates to the matter of public interest.

Of the ten fee waivers requested, the Commissioner allowed one full fee waiver, two half fee waivers and confirmed the decision of the public body in the remaining seven instances.

As the calculation of fees is fundamental to the freedom of information process,

it is the hope of this Office that the guidelines established in this decision will be helpful to both individual users of the freedom of information process and the various public bodies, subject to the *Act*. Guidelines were also provided on how to properly exercise discretion on the question of whether a fee waiver should be given by a public body to an individual applicant. These guidelines should also be helpful for all users of the freedom of information process.

(2) Order No. 03-006 Re: Department of Development and Technology, dated November 3, 2003

The applicant made a request under the *Freedom of Information and Protection of Privacy Act* for access to any documentation of the Prince Edward Island Government regarding an arbitration between two specific companies. The applicant had particular interest in documentation outlining the arbitrator's conclusion/decision of the arbitration.

The public body's decision was to disclose the information to the applicant and the public body notified the affected third party accordingly. The third party applied to the Commissioner to review the decision of the public body as it was the third party's position that the information should not be provided.

The question to be determined by the Commissioner was whether the head of the public body properly applied section 14 of the *Act* in making its decision to grant access to the records in that the information did not meet the harms or other conditions set out in

section 14(1).

Section 14 is a mandatory exception. If it is determined that section 14 applies to the records, then the public body cannot disclose them. Section 14 applies where disclosure of information would reveal confidential business information of a third party. Guidelines for the interpretation of section 14 were set out in this Order, as well as in Order 03-007.

The Commissioner found that although the records did reveal commercial/financial information of the third party, there was not adequate evidence to conclude, on a balance of probabilities, that the records were supplied in confidence to the public body. In addition, there was no evidence to conclude that disclosure of the records at issue would harm the business interests of the third party under subsection 14(1)(c). Therefore, it was determined that the public body properly applied section 14 of the *Act* in its decision to grant access to the records at issue.

(3) Order No. 03-004 Re: Prince Edward Island Workers Compensation Board, dated August 19th, 2003

The applicant had applied to the Workers Compensation Board for an alphabetical list of all employees of the Workers Compensation Board, including salary and job title. The public body provided the applicant with a partial response to his request, namely, the position titles of employees and corresponding salary range. The public body did not provide the names of employees or the corresponding specific salary. As the basis for its

decision, the public body relied on section 15 of the *Act* and stated that disclosure of the records as requested would constitute an unreasonable invasion of a third party's personal privacy.

The applicant requested a review of the public body's decision by the Commissioner.

In the Commissioner's Order, section 15 of the *Act* was analyzed and guidelines were set out for the interpretation of section 15. These guidelines may be followed in future by individual applicants and public bodies.

The Order stated that in essence, in making a decision pursuant to section 15 of the Act, the public body should first determine whether the requested information is personal information in accordance with the definition set out in the *Act*. If the requested information is confirmed to be personal information, then the public body should then determine whether disclosure of the personal information will constitute an unreasonable invasion of personal privacy. The Order lists factors which should be considered by the public body before reaching its conclusion.

On the facts of this case, the Commissioner found that job title and salary information do constitute personal information in accordance with the definition under the *Act*. The Commissioner also concluded that disclosure of the job title and salary information would constitute an unreasonable invasion of the personal privacy of the employees. The

Commissioner added

that the level of transparency and accountability achieved by the public body in disclosing the employees' job title and salary range is sufficient to promote the objectives of the *Act* while still protecting some privacy of the employees.

It should be noted that the applicant has applied for judicial review of this particular Order. Next year's Annual Report will include a description of the progress or outcome of the judicial review.

(4) Privacy Complaints

There are currently four open privacy complaints, none of which have been resolved to date.

APPENDIX A

FREEDOM OF INFORMATION
2002 - 2003
SUMMARY OF APPLICATIONS FOR REVIEW

PUBLIC BODY	REQUESTS FOR ACCESS TO INFORMATION *	APPLICATIONS FOR REVIEW	RESOLVED OR CLOSED	ORDER ISSUED	ONGOING
Agriculture and Forestry	12	0			
Community and Cultural Affairs	1	0			
Development and Technology	17	7	2	4	1
Education	1	0			
Fisheries Aquaculture and Environment	18	8		2	6
Health and Social Services	35	3	2		1
Tourism	9	2		2	
Transportation and Public Works	13	4		3	1
Executive Council Office	10	0			
Office of the Attorney General	3	0			
Office of the Premier	2	0			
Provincial Treasury	18	0			
Fathers of Confederation Buildings Trust	0	0			
Island Regulatory and Appeals Commission	0	0			

PUBLIC BODY	REQUESTS FOR ACCESS TO INFORMATION *	APPLICATIONS FOR REVIEW	RESOLVED OR CLOSED	ORDER ISSUED	ONGOING
Island Waste Management Corporation	8	7	6	1	
Prince Edward Island Liquor Control Commission	1	1		1	
Prince Edward Island Public Service Commission	4	0			
Workers Compensation Board of Prince Edward Island	9	4	2	2	
Commission Scolaire de langue francaise	0	0			
Western School Board	0	0			
Eastern School Board	0	0			
Kings Health Region	0	0			
West Prince Health	0	0			
Queens Health Region	0	0			
East Prince Health	0	0			
Provincial Health Services Authority	0	0			
TOTAL:	**161**	**36**	**12**	**15**	**9**

* Obtained from Access and Privacy Services Office

APPENDIX B

PROTECTION OF PRIVACY
2002 - 2003
SUMMARY OF PRIVACY COMPLAINTS

PUBLIC BODY	PRIVACY COMPLAINTS	RESOLVED OR CLOSED	ORDER ISSUED	ONGOING
Agriculture and Forestry	0			
Community and Cultural Affairs	0			
Development and Technology	0			
Education	0			
Fisheries Aquaculture and Environment	0			
Health and Social Services	2			2
Tourism	0			
Transportation and Public Works	0			
Executive Council Office	0			
Office of the Attorney General	0			
Office of the Premier	0			
Provincial Treasury	0			
Fathers of Confederation Buildings Trust	0			
Island Regulatory and Appeals Commission	0			
Island Waste Management Corporation	0			

PUBLIC BODY	PRIVACY COMPLAINTS	RESOLVED OR CLOSED	ORDER ISSUED	ONGOING
Prince Edward Island Liquor Control Commission	0			
Prince Edward Island Public Service Commission	0			
Workers Compensation Board of Prince Edward Island	1			1
Commission Scolaire de langue francaise	0			
Western School Board	0			
Eastern School District	0			
Kings Health Region	0			
West Prince Health	0			
Queens Health Region	1			1
East Prince Region	0			
Provincial Health Services Authority	0			
TOTAL:	**4**	**0**	**0**	**4**